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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 889/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Advocate

versus

TARUNA AUTO PVT. LTD. Respondent
Through: None

% Date of Decision: 19th July, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | |
| 2. To be referred to the Reporter or not? | No. |
| 3. Whether the judgment should be reported in the Digest? | No. |

MANMOHAN, J (ORAL)

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity “Act, 1961”) challenging the order dated 19th June, 2009 passed by the Income Tax Appellate Tribunal (in short “ITAT”) in ITA No. 1146/Del/2009, for the assessment year 2001-2002.

2. Ms. Prem Lata Bansal, learned counsel for Revenue submitted that ITAT had erred in law in deleting the addition of rupees twelve lacs on account of undisclosed income under Section 68 of Act, 1961.



She further submitted that the burden was on the assessee to prove identity and creditworthiness of the shareholder as well as the genuineness of the transaction – which the assessee had failed to discharge in the present case.

3. Both the Commissioner of Income Tax (Appeals) [in short “Commissioner”] and the ITAT have found that the assessee had filed copies of share applications, share certificates, conformations/affidavits and income tax return acknowledgements. The PAN numbers of the investors had also been furnished to the assessing officer. Both the authorities below have also held that if the share application money had been received by the assessee from alleged bogus shareholders, then the Revenue was free to reopen the alleged shareholders’ assessment in accordance with law.

4. In our considered opinion, the approach adopted by the Commissioner and ITAT is in consonance with the decision of Supreme Court in ***Commissioner of Income Tax Vs. Lovely Exports (P) Ltd.***, **216 CTR 195 (SC)** wherein it has been held as under :-

“2. Can the amount of share money be regarded as undisclosed income under s. 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.....”



5. Keeping in view the aforesaid mandate of law, the st
application money of rupees twelve lacs cannot be regarded as
undisclosed income of assessee under Section 68 of Act, 1961.
Accordingly, present appeal is dismissed *in limine* but with no order as
to costs.

MANMOHAN, J

CHIEF JUSTICE

JULY 19, 2010
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